

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-11879-MLW**

Lepper v. Russo
Assigned to: Chief Judge Mark L. Wolf
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 08/27/2004
Date Terminated: 08/31/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

Frederic Lepper




represented by **Alan D. Campbell**
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V.

Respondent















Lois Russo

represented by **Annette C. Benedetto**
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| Date Filed | # | Docket Text |
|------------|---|--|
| 08/27/2004 |  1 | MOTION for Leave to Proceed in forma pauperis by Frederic Lepper. (Jenness, Susan) (Entered: 08/27/2004) |
| 08/27/2004 |  2 | PETITION for writ of habeas corpus pursuant to 28:2254, filed by Frederic Lepper.(Jenness, Susan) (Entered: 08/27/2004) |
| 08/27/2004 |  | If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge |

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| | | Cohen. (Jenness, Susan) (Entered: 08/27/2004) |
| 08/27/2004 | ● | Case undergoing preliminary screening (Jenness, Susan) (Entered: 08/27/2004) |
| 08/27/2004 | ③5 | NOTICE of Appearance on behalf of Frederic Lepper by Alan D. Campbell (Jenness, Susan) (Entered: 02/28/2005) |
| 02/18/2005 | ④3 | Judge Mark L. Wolf : ORDER entered granting 1 Motion for Leave to Proceed in forma pauperis (Greenberg, Rebecca) (Entered: 02/22/2005) |
| 02/18/2005 | ④4 | Judge Mark L. Wolf : ORDER entered. SERVICE ORDER re 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 20 days of rpt of this order.(Greenberg, Rebecca) (Entered: 02/22/2005) |
| 03/17/2005 | ④6 | NOTICE of Appearance by Annette C. Benedetto on behalf of Lois Russo, FILED. (Boyce, Kathy) (Entered: 03/22/2005) |
| 03/17/2005 | ④7 | MOTION for Extension of Time to May 20, 2005 to File Response/Reply as to 2 Petition for writ of habeas corpus (28:2254) by Lois Russo, FILED, c/s.(Boyce, Kathy) (Entered: 03/22/2005) |
| 04/07/2005 | ● | Judge Mark L. Wolf : Electronic ORDER entered granting 7 Motion for Extension of Time to File Response/Reply re 7 MOTION for Extension of Time to May 20, 2005 to File Response/Reply as to 2 Petition for writ of habeas corpus (28:2254) (O'Leary, Dennis) (Entered: 04/07/2005) |
| 05/20/2005 | ④8 | MOTION for Extension of Time to June 20, 2005 to File Answer by Lois Russo.(Benedetto, Annette) (Entered: 05/20/2005) |
| 06/16/2005 | ④9 | RESPONSE/ANSWER to <i>Habeas Corpus Petition under Section 2254</i> by Lois Russo. (Benedetto, Annette) (Entered: 06/16/2005) |
| 06/16/2005 | ④10 | Recommendations for Scheduling Order <i>for Petitioner to file Memorandum in support of petition within 90 days and Respondent to file opposition within 90 days thereafter.</i> (Benedetto, Annette) (Entered: 06/16/2005) |
| 06/16/2005 | ④11 | NOTICE by Lois Russo <i>Notice of Filing of Supplemental Answer with Clerk's Office</i> (Benedetto, Annette) (Entered: 06/16/2005) |
| 06/17/2005 | ④12 | SUPPLEMENTAL ANSWER to 2 Petition for writ of habeas corpus (28:2254) by Lois Russo, FILED. (Volumes 1 - 3) (Boyce, Kathy) (Entered: 06/17/2005) |
| 06/20/2005 | ● | Judge Mark L. Wolf : Electronic ORDER entered granting 8 Motion for Extension of Time to Answer (O'Leary, Dennis) (Entered: 06/20/2005) |
| 07/25/2005 | ● | Judge Mark L. Wolf : Electronic ORDER entered. ELECTRONIC ENDORSEMENT re 10 Recommendations for Scheduling Order. Allowed. Petitioner shall, by 9/16/2005, file his memorandum of law in support of his petition. Respondent shall, by 12/16/2005, file his memorandum of law in opposition to the petition.(O'Leary, Dennis) |

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| | | (Entered: 07/25/2005) |
| 09/16/2005 | <u>13</u> | MOTION for Extension of Time to sixty days for Filing Memorandum of Law by Frederic Lepper, FILED, c/s.(Boyce, Kathy) (Entered: 09/19/2005) |
| 09/27/2005 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>13</u> Motion for Extension of Time to File Memorandum of Law. (O'Leary, Dennis) (Entered: 09/28/2005) |
| 11/08/2005 | <u>14</u> | ASSENTED TO MOTION for Extension of Time for 60 days to 1/16/06 to File Memorandum of Law in support of <u>2</u> Petition for writ of habeas corpus (28:2254) and for the Respondent's Opposition to be due 90 days thereafter by Petitioner Frederic Lepper, FILED, c/s.(Boyce, Kathy) (Entered: 11/15/2005) |
| 12/01/2005 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>14</u> Motion for Extension of Time to File Response/Reply re <u>14</u> MOTION for Extension of Time to 1/16/06 to File Response/Reply as to <u>2</u> Petition for writ of habeas corpus (28:2254) (O'Leary, Dennis) (Entered: 12/01/2005) |
| 01/17/2006 | <u>15</u> | ASSENTED TO MOTION for Extension of Time to thirty days (on or before 2/26/06) to File Response/Reply as to Order on Motion for Extension of Time to File Response/Reply, by Frederic Lepper, FILED, c/s.(Boyce, Kathy) (Entered: 01/18/2006) |
| 01/23/2006 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>15</u> Motion for Extension of Time to File Response/Reply re <u>15</u> MOTION for Extension of Time to thirty days to File Response/Reply as to Order on Motion for Extension of Time to File Response/Reply, Petitioner's Memorandum due by 2/16/2006 Respondent's opposition due by 5/17/2006. (O'Leary, Dennis) (Entered: 01/23/2006) |
| 02/17/2006 | <u>16</u> | ASSENTED TO MOTION for a 30 Day Extension of Time to File Memorandum of Law by Frederic Lepper, FILED, c/s.(Boyce, Kathy) (Entered: 02/22/2006) |
| 02/22/2006 | <u>17</u> | NOTICE issued to Attorney Alan D. Campbell regarding mandatory use of ECF in compliance with Local Rule 5.4. Failure to comply may result in the imposition of sanctions. (Boyce, Kathy) Additional attachment(s) added on 2/22/2006 (Boyce, Kathy). (Entered: 02/22/2006) |
| 03/02/2006 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>16</u> Motion for Extension of Time to File. Petitioner's memorandum shall be filed by 3/17/06. Respondents opposition shall be filed by 6/16/06. (O'Leary, Dennis) (Entered: 03/02/2006) |
| 03/20/2006 | <u>18</u> | Assented to MOTION for Extension of Time to April 17, 2006 to to file memorandum of law by Frederic Lepper.(Campbell, Alan) (Entered: 03/20/2006) |
| 03/22/2006 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>18</u> Motion for Extension of Time (O'Leary, Dennis) (Entered: 03/22/2006) |

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| 04/18/2006 |  <u>19</u> | Assented to MOTION for Extension of Time to 05/01/2006 to File memorandum of law by Frederic Lepper.(Campbell, Alan) (Entered: 04/18/2006) |
| 04/19/2006 |  | Judge Mark L. Wolf : Electronic ORDER entered granting <u>19</u> Motion for Extension of Time Petitioner's Memorandum of Law due by 5/1/2006. Respondent's Opposition due by 8/1/2006. (O'Leary, Dennis) (Entered: 04/19/2006) |
| 05/01/2006 |  <u>20</u> | Assented to MOTION for Extension of Time to May 8, 2006 to file memorandum of law by Frederic Lepper.(Campbell, Alan) (Entered: 05/01/2006) |
| 05/02/2006 |  | Judge Mark L. Wolf : Electronic ORDER entered granting <u>20</u> Motion for Extension of Time. Petitioner's brief shall be filed by My 8, 2006. respondent's brief shall be filed by August 7, 2006. (O'Leary, Dennis) (Entered: 05/02/2006) |
| 05/08/2006 |  <u>21</u> | MEMORANDUM OF LAW by Frederic Lepper to <u>2</u> Petition for writ of habeas corpus (28:2254). (Campbell, Alan) (Entered: 05/08/2006) |
| 06/15/2006 |  <u>22</u> | MOTION for Extension of Time to September 18, 2006 to file Memorandum in Opposition to the Petition by Lois Russo.(Benedetto, Annette) (Entered: 06/15/2006) |
| 06/16/2006 |  | Judge Mark L. Wolf : Electronic ORDER entered granting <u>22</u> Motion for Extension of Time. Respondent shall reply to the petition by 9/18/2006. (O'Leary, Dennis) (Entered: 06/16/2006) |
| 09/18/2006 |  <u>23</u> | MOTION for Extension of Time to November 17, 2006 to file memorandum of law in opposition to petition by Lois Russo.(Benedetto, Annette) (Entered: 09/18/2006) |
| 10/23/2006 |  | Judge Mark L. Wolf : Electronic ORDER entered granting <u>23</u> Motion for Extension of Time (O'Leary, Dennis) (Entered: 10/23/2006) |
| 11/17/2006 |  <u>24</u> | MOTION for Extension of Time to December 22, 2006 to file memorandum of law in opposition to the petition by Lois Russo. (Benedetto, Annette) (Entered: 11/17/2006) |
| 11/28/2006 |  | Judge Mark L. Wolf : Electronic ORDER entered granting <u>24</u> Motion for Extension of Time. ALLOWED. (O'Leary, Dennis) (Entered: 11/28/2006) |
| 12/15/2006 |  <u>25</u> | MEMORANDUM OF LAW by Lois Russo to <u>2</u> Petition for writ of habeas corpus (28:2254). (Benedetto, Annette) (Entered: 12/15/2006) |
| 01/08/2007 |  <u>26</u> | Response by Frederic Lepper to <i>Respondent's Memorandum of Law in Opposition to the Petition for Writ of Habeas Corpus</i> . (Campbell, Alan) (Entered: 01/08/2007) |
| 05/22/2007 |  <u>27</u> | Judge Mark L. Wolf : ORDER entered. MEMORANDUM AND ORDER. Accordingly, it is hereby ORDERED that:1. The parties shall, by June 22, 2007, file supplementary memoranda addressing whether |

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| | | Lepper: (i) violated the contemporaneous objection rule; (ii) was required by Massachusetts procedural rules to raise his self-representation claim in a motion for new trial; (iii) violated any other Massachusetts procedural rule; and (iv) whether any such rule is adequate to bar federal habeas review.2. Any responses shall be filed 15 days thereafter.(O'Leary, Dennis) (Entered: 05/22/2007) |
| 06/19/2007 | <u>28</u> | MOTION for Extension of Time to June 28, 2007 to file supplemental memoranda of law <i>Joint Motion</i> by Lois Russo.(Benedetto, Annette) (Entered: 06/19/2007) |
| 06/20/2007 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>28</u> Motion for Extension of Time (O'Leary, Dennis) (Entered: 06/20/2007) |
| 06/28/2007 | <u>29</u> | MEMORANDUM OF LAW by Frederic Lepper to <u>27</u> Memorandum & ORDER,,. (Campbell, Alan) (Entered: 06/28/2007) |
| 06/28/2007 | <u>30</u> | MEMORANDUM OF LAW by Lois Russo to <u>27</u> Memorandum & ORDER,,. (Benedetto, Annette) (Entered: 06/28/2007) |
| 06/29/2007 | <u>31</u> | Judge Mark L. Wolf : ORDER entered. MEMORANDUM AND ORDER. It is hereby ORDERED that:1. The petitioner shall, by July 13, 2007, seek to show cause why his petition should not be dismissed without prejudice as unexhausted or, in the alternative, request that the court delete his unexhausted claims and proceed under the instant petition. This filing shall be included with any response to the respondent's memorandum filed in accordance with the May 22, 2007 Memorandum and Order.2. Respondent shall reply by August 3, 2007. (O'Leary, Dennis) (Entered: 06/29/2007) |
| 07/13/2007 | <u>32</u> | MEMORANDUM OF LAW by Frederic Lepper. (Campbell, Alan) (Entered: 07/13/2007) |
| 07/30/2007 | <u>33</u> | MOTION for Extension of Time to Aug. 17, 2007 to file responsive memo on exhaustion by Lois Russo.(Benedetto, Annette) (Entered: 07/30/2007) |
| 08/01/2007 | | Judge Mark L. Wolf : Electronic ORDER entered granting <u>33</u> Motion for Extension of Time (O'Leary, Dennis) (Entered: 08/01/2007) |
| 08/16/2007 | <u>34</u> | MEMORANDUM OF LAW by Lois Russo to <u>31</u> Memorandum & ORDER,,. (Benedetto, Annette) (Entered: 08/16/2007) |
| 08/31/2007 | <u>35</u> | Judge Mark L. Wolf : ORDER entered. MEMORANDUM AND ORDER. For the reasons discussed in this Memorandum, it is hereby ORDERED that the Petition For Habeas Corpus (Docket No. 1) is DENIED.(O'Leary, Dennis) (Entered: 08/31/2007) |
| 08/31/2007 | <u>36</u> | Judge Mark L. Wolf : ORDER entered. JUDGMENT in favor of Lois Russo against Frederic Lepper(O'Leary, Dennis) (Entered: 08/31/2007) |
| 09/28/2007 | <u>37</u> | NOTICE OF APPEAL to the Federal Circuit as to <u>35</u> Memorandum & ORDER by Frederic Lepper. Appeal Record due by 10/18/2007. (Campbell, Alan) Modified on 10/1/2007: Note: This Notice of Appeal |

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| | | had inadvertently been e-filed as a Notice to the Federal Circuit and has been redocketed as a Notice of Appeal to the First Circuit: See Document No. 40 (Boyce, Kathy). (Entered: 09/28/2007) |
| 09/28/2007 |  38 | MOTION for Certificate of Appealability by Frederic Lepper.(Campbell, Alan) (Entered: 09/28/2007) |
| 09/28/2007 |  39 | MEMORANDUM in Support re 38 MOTION for Certificate of Appealability filed by Frederic Lepper. (Campbell, Alan) (Entered: 09/28/2007) |
| 09/28/2007 |  40 | NOTICE OF APPEAL as to 36 Judgment by Frederic Lepper NOTICE TO COUNSEL: A Transcript Report/Order Form. which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerk/transcript.htm MUST be completed and submitted to the Court of Appeals.Appeal Record due by 10/18/2007. (Boyce, Kathy) (Entered: 10/01/2007) |
| 10/01/2007 |  | Notice of correction to docket made by Court staff. Correction: Document No. 37. Notice of Appeal corrected because: as the Notice of Appeal is an Appeal to the First Circuit and not an Appeal to the Federal Circuit (Boyce, Kathy) (Entered: 10/01/2007) |